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SUBJECT: FRANCE'S DIGITAL COPYRIGHT PROTECTION LAW AND
APPROACH TO ILLEGAL DOWNLOADS

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¶1. (U) Summary: France seeks to tackle the problem of online piracy through the "Creation and Internet Law," which will take effect in early 2010. The bill introduces a new legal framework to deter and sanction online piracy, and represents the first stage in France's on-going effort to stop illegal downloading, which a recent British study found to be higher in France than in the UK, Germany, or United States. The next step will be to promote legitimate online content and find new ways to remunerate artists and those who support them, perhaps via new taxes or fees on Internet advertising. President Sarkozy has empowered Patrick Zelnick, CEO of Naive Records and co-President of Impala, the only pan-European association dedicated to cultural small and medium enterprises (SMEs), to lead a mission to develop proposals in France based on consultations with industry and users.

Hadopi 1: Establishing a Legal Framework to
Control Online Piracy

¶2. (U) The policy of "graduated response" stems from an agreement unveiled on November 23, 2007, by President Sarkozy and Denis Olivennes, then-CEO of FNAC, France's largest consumer electronics and media retailer. Olivennes' three months of consultations with Internet Service Providers (ISPs) and content industries on means to prevent "the hemorrhaging of cultural works on the Internet" led to the establishment of the High Authority for the Distribution of Works and the Protection of Rights on the Internet (Hadopi), charged with issuing escalating warnings to illegal downloaders and, if warnings go unheeded, cutting off their Internet access. The Creation and Internet Law is known as Hadopi 1, the first step in a process to control online piracy. Hadopi 1 established a new legal framework to protect digital copyright.

Hadopi 2: Clarifying the Powers of the
High Authority

¶3. (U) Left-wing parliamentarians challenged the sanctions provisions of Hadopi 1 before the Constitutional Court in May 2009. The court approved the creation of the Higher Authority and the graduated response, but denied the High Authority the power to cut off Internet service, which the court ruled could only be ordered by judge. Parliament then passed a new law covering sanctions, known as Hadopi 2, to comply with the court's ruling. Hadopi 2's sanction system stipulates

that only a judge can cut off Internet service to illegal downloaders, and allows defendants to plead before the court before access is terminated.

¶4. (U) Hadopi 1 and 2 provisions address web users, ISPs, content providers, and government institutions. Web users are responsible for the fraudulent use of their subscription; ISPs send warning messages on behalf of the Hadopi authority and implement court-ordered sanctions; and the content industries promote common government-approved "security devices" such as fingerprinting and watermarking technologies. Implementation should be set in motion in January 2010, and will be capable of warning 10,000 illegal downloaders per day.

Hadopi 3: Developing an Alternative to Illegal Downloading: The Zelnick Mission

¶5. (U) Inspired by Olivennes' consensus-building approach, French Culture Ministry Frederic Mitterrand called for a deal between ISPs and content producers to ensure that web users are given legal downloading options. By January, he wants users to have diverse, inexpensive, and easy to access options. Creators and producers of cultural content are promised remuneration through "resources stemming from new economic models." Mitterrand stressed these two elements in his August 11 letter to Patrick Zelnick and his two co-members of the mission, former Culture Minister Jacques Toubon and Guillaume Cerutti, CEO of Sotheby's France.

¶6. (U) How to finance and remunerate content creators remains the key question. The Zelnick Committee is looking at a variety of options, including government subsidies for creative industries, and taxes on Internet

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access, Internet advertising, or both. In his letter to Zelnick, Mitterrand encourages him to draw some of his proposals from two cultural events that took place during last year's French EU Presidency: The European Independence Arena; and the first Avignon Forum for Culture, touted as a "cultural Davos." During the European Independence Arena, Impala called for a Europe-wide action plan for music SMEs through a system of tax benefits, lower VAT, public-private loan guarantee schemes, and greater market access. Impala is also pushing for new European Investment Bank schemes, the establishment of a European Creative Industries Bank, an increase in the EU's cultural budget from its current 0.05 percent of the total EU budget to 2.6 percent, or a yearly 1.5 billion euros, as well as new national investment programs. According to unconfirmed French press reports, other proposals may also include the financial participation of ISPs through a tax on their turnover. ISPs are already contributing to the financing of audiovisual creation in proportion to their turnover via the Cosip GOF support fund for the audiovisual program industry, a result of the March 2007 law on the television of the future.

¶7. (U) Some of Zelnick's interlocutors (although not Mitterrand's letter) also tabled the idea of a flat tax on packages offered by ISPs, the income from which would go to French content producers to compensate them for losses due to internet piracy (even though much of the illegally downloaded material is likely to be American). Zelnick's commission will make its proposals by the end of November, 2009, and finalize their report to the President by January, 2010.